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BY E-MAIL AND WEB POSTING

September 25, 2009

**To: All Licensed Electricity Distributors
All Other Interested Parties**

**Re: Board File Number: EB-2009-0349
Rate Protection and the Determination of Direct Benefits under
Ontario Regulation 330/09
Section 79.1 of the *Ontario Energy Board Act, 1998* (the "OEB Act")**

Background and Announcement of Board Consultation

The *Green Energy Act* amends the OEB Act to give the Board the following new objective:

To promote the use and generation of electricity from renewable energy sources in a manner consistent with the policies of the Government of Ontario, including the timely expansion or reinforcement of transmission systems and distribution systems to accommodate the connection of renewable energy generation facilities.

The *Green Energy Act* also recognizes that some portion of the costs of distribution system investments made to enable the connection of a 'renewable energy generation facility' should be shared among the province's ratepayers. Specifically, the *Green Energy Act* amended the OEB Act to introduce a mechanism under section 79.1 whereby some of the Board-approved costs incurred by a distributor to make an '*eligible investment*' for the purpose of connecting or enabling the connection of a renewable energy generation facility to its distribution system may be recovered from all provincial ratepayers rather than solely from the ratepayers of the distributor making the investment.

The sections of the OEB Act referenced in this letter are attached as Attachment A for convenience.

Ontario Regulation 330/09, filed September 9, 2009 (the "Regulation"), sets out the framework for the determination of the amount which may be recovered from all provincial ratepayers. The Regulation is attached as Attachment B for convenience.

In particular, the Regulation defines that amount as the difference between:

- (a) the costs associated with making an eligible investment and determined to be the responsibility of the distributor in accordance with the Distribution System Code (DSC), and
- (b) the amount the Board determines to represent the '*direct benefits*' that accrue to prescribed consumers as a result of all or part of the eligible investment made or planned to be made by the distributor.

The amount the Board determines to represent the direct benefits that accrue to prescribed customers of the distributor will also represent the amount that will be recovered from the distributor's customers.

The classes of costs that qualify as an eligible investment will be determined through the Board's DSC amendment process that is currently underway in EB-2009-0077.

The purpose of this letter is to notify all interested parties of the Board's intent to initiate a consultation process in the coming weeks to address how the Board should determine what constitutes direct benefits that accrue to the consumers of a distributor when that distributor has incurred costs to make an eligible investment in its distribution system to accommodate a renewable energy generation facility. The consultation will also address the possible methodologies for quantifying these direct benefits.

Process

In the coming weeks, Board staff will issue a draft discussion paper for comment by all interested parties. In particular, this paper will set out suggested categories of direct benefits that accrue to the consumers of a licensed distributor as a result of an eligible investment made (or planned to be made) by a distributor to its distribution system.

The draft discussion paper will also propose possible methodologies for quantifying the amount of any such direct benefits.

Parties will have an opportunity to provide input into this consultation, further details of which will follow.

The outcome of this process will be a Board policy that will define the direct benefits requirements for the Regulation.

Invitation to Participate

The Board encourages participation in this consultation process by all interested parties. Those interested in participating should indicate their intent by letter addressed to the Board Secretary by **October 09, 2009**.

The letter should include a statement as to whether the participant wishes to request cost eligibility. All requests for cost eligibility should be accompanied by the information specified below under the heading "Cost Awards".

Filing with the Board

All filings to the Board in relation to this consultation must be addressed to the Board Secretary, quote file number **EB-2009-0349** and include your name, postal address and telephone number and, if available, e-mail address and fax number. Two paper copies of each filing must be provided. The Board asks that participants make every effort to provide an electronic copy of their filings in searchable/unrestricted Adobe Acrobat (PDF) format and to submit their filings through the Board's web portal at www.errr.oeb.gov.on.ca. If you do not have a user ID, please visit the "e-filing services" webpage on the Board's website at www.oeb.gov.on.ca, and fill out a user ID password request. Additionally, interested parties are requested to follow the document naming conventions and document submission standards outlined in the document entitled "RESS Document Preparation – A Quick Guide" also found on the "e-filing services" webpage. If the Board's web portal is not available, electronic copies of filings may be filed by e-mail at BoardSec@oeb.gov.on.ca. Those who do not have internet access should submit the electronic copy of their filing on CD or diskette.

Filings to the Board must be received by the Board Secretary by **4:45 p.m.** on the required date.

Cost Awards

Cost awards will be available to eligible parties under section 30 of the *Ontario Energy Board Act, 1998* for their participation in this consultation. Costs awarded will be recovered from all licensed electricity distributors based on their respective distribution revenues.

The Board will determine eligibility for costs in accordance with its *Practice Direction on Cost Awards*. Any person requesting cost eligibility must include a written submission to that effect in their letter indicating their intention to participate. The written submission must identify the nature of the person's interest in this process and the grounds on which the person believes that it is eligible for an award of costs (including addressing the Board's cost eligibility criteria as set out in section 3 of the Board's *Practice Direction on Cost Awards*). An explanation of any other funding to which the person has access must also be provided, as should the name and credentials of any lawyer, analyst or consultant that the person intends to retain, if known.

All requests for cost eligibility will be posted on the Board's website.

If an electricity distributor has any objections to any of the requests for cost eligibility, such objections must be filed with the Board by **October 16, 2009**. Any objections will be posted on the Board's website. The Board will then make a final determination on the cost eligibility of the requesting parties. In order to facilitate a timely decision on cost eligibility, the deadlines for filing cost eligibility requests and objections will be strictly enforced.

Groups representing the same interests or class of persons are expected to make every effort to communicate and co-ordinate their participation in this process. Costs may be pooled when groups with common viewpoints collaborate and pool their resources.

Eligible Activities

The Board anticipates that cost awards be available for the provision of written comments on the draft guidelines issued by Board staff and may be available for any later activities forming part of this consultation process. Details will be made available by the Board at the relevant time.

Any questions regarding this consultation process should be directed to Chris Cincar at chris.cincar@oeb.gov.on.ca or at 416-440-7696. The Board's toll-free number is 1-888-632-6273.

Yours truly,

Original signed by

Kirsten Walli
Board Secretary

Attachment A

Excerpts from OEB Act Referenced in Attached Correspondence

1. (1) The Board, in carrying out its responsibilities under this or any other Act in relation to electricity, shall be guided by the following objectives:

1. To protect the interests of consumers with respect to prices and the adequacy, reliability and quality of electricity service.
2. To promote economic efficiency and cost effectiveness in the generation, transmission, distribution, sale and demand management of electricity and to facilitate the maintenance of a financially viable electricity industry.
3. To promote electricity conservation and demand management in a manner consistent with the policies of the Government of Ontario, including having regard to the consumer's economic circumstances.
4. To facilitate the implementation of a smart grid in Ontario.
5. To promote the use and generation of electricity from renewable energy sources in a manner consistent with the policies of the Government of Ontario, including the timely expansion or reinforcement of transmission systems and distribution systems to accommodate the connection of renewable energy generation facilities.

Cost recovery, connecting generation facilities

79.1 (1) The Board, in approving just and reasonable rates for a distributor that incurs costs to make an eligible investment for the purpose of connecting or enabling the connection of a qualifying generation facility to its distribution system, shall provide rate protection for prescribed consumers or classes of consumers in the distributor's service area by reducing the rates that would otherwise apply in accordance with the prescribed rules.

Distributor entitled to compensation re lost revenue

(2) A distributor is entitled to be compensated for lost revenue resulting from the rate reduction provided under subsection (1) that is associated with costs that have been approved by the Board and incurred by the distributor to make an eligible investment referred to in subsection (1).

Consumers' contributions

(3) All consumers are required to contribute towards the amount of any compensation required under subsection (2) in accordance with the regulations.

Regulations

- (4)** The Lieutenant Governor in Council may make regulations,
- (a) prescribing consumers or classes of consumers eligible for rate protection under this section;
 - (b) prescribing criteria to be met by a qualifying generation facility;

- (c) prescribing the criteria to be satisfied for an investment to be an eligible investment;
- (d) prescribing rules for the calculation of the amount of the rate reduction;
- (e) prescribing maximum amounts of the total annual value of rate protection that may be provided under this section;
- (f) prescribing rules respecting the amounts that must be collected to compensate distributors, including rules,
 - (i) respecting the calculation of those amounts,
 - (ii) establishing the time and manner of collection,
 - (iii) requiring the amounts to be paid in instalments and requiring the payment of interest or penalties on late payments,
 - (iv) prescribing methods of ensuring that the amounts required cannot be bypassed, and
 - (v) respecting the distribution of the amounts collected;
- (g) prescribing the powers and duties of the Board in relation to the calculation of amounts to be collected and the time and manner of collection and distribution;
- (h) respecting any other matter that the Lieutenant Governor in Council considers necessary for the purposes of this section.

Definitions

(5) In this section,

“eligible investment” means an investment in the construction, expansion or reinforcement of a distribution line, transformer, plant or equipment used for conveying electricity at voltages of 50 kilovolts or less that meets the criteria prescribed by regulation;

“qualifying generation facility” means a generation facility that meets the criteria prescribed by regulation.

Attachment B

Full Text of Ontario Regulation 330/09

Definitions and interpretation

1. (1) In this Regulation,

“consumer” has the same meaning as in the *Electricity Act, 1998*;

“embedded distributor” means a licensed distributor who is not a market participant and to whom a host distributor distributes electricity;

“embedded generator” means a generator who is not a market participant and whose generation facility is connected to a distribution system of a licensed distributor, but does not include a generator who consumes more electricity than it generates;

“host distributor” means a licensed distributor who is a market participant and who distributes electricity to another licensed distributor who is not a market participant;

“licensed distributor” means a distributor who is licensed under Part V of the Act;

“qualified distributor” means a distributor serving consumers or classes of consumers that are being provided rate protection pursuant to subsection 79.1 (1) of the Act in accordance with this Regulation;

“rate protection” means rate protection under section 79.1 of the Act.

(2) The prescribed criterion for falling within the definition of an “eligible investment” under subsection 79.1 (5) of the Act is that the costs associated with the investment are determined to be the responsibility of the distributor in accordance with the Board’s Distribution System Code.

(3) The prescribed criterion for falling within the definition of a “qualifying generation facility” under subsection 79.1 (5) of the Act is that the generation facility satisfies the criteria necessary to be a renewable energy generation facility under the *Electricity Act, 1998*.

Consumers eligible for rate protection

2. Consumers or classes of consumers are prescribed consumers or classes of consumers for the purposes of subsection 79.1 (4) of the Act if they are served by a licensed distributor that has incurred costs to make an eligible investment that has been approved by an order of the Board.

Calculation of rate protection

3. (1) The Board shall calculate the annual amount of rate protection to be provided to prescribed consumers or classes of consumers using the following formula:

$$A = B - C$$

where,

A is the amount of rate protection to be provided to prescribed consumers or classes of consumers in a distributor's service area,

B is the costs associated with the eligible investment described in subsection 1 (2), and

C is the amount that the Board determines to represent the direct benefits that accrue to prescribed consumers or classes of consumers as a result of all or part of the eligible investment made or planned to be made by the distributor.

(2) The Board shall calculate a monthly amount of compensation, referred to as the distributor's monthly compensation amount, to which each qualifying distributor is entitled, which amount shall be based on the amount calculated under subsection (1).

(3) Where the Board provides rate protection for a qualified distributor's prescribed consumers or classes of consumers, the Board shall, as often as is necessary and no less frequently than annually, calculate an aggregate monthly compensation amount by aggregating the amounts calculated under subsection (2) for each qualified distributor for each month for which collection is required.

(4) The Board shall, as often as is necessary and no less frequently than annually, calculate the monthly amount to be collected by the IESO under subsection 4 (2), such that the total amount that is to be collected is equal to the total amount of rate protection that is to be provided.

(5) The Board shall, as often as is necessary and no less frequently than annually, calculate the amount of the charge to be collected by each distributor under subsection 4 (3) for each kilowatt hour of electricity that is distributed to a consumer or embedded distributor, such that the total forecasted amount that is to be collected is equal to the total amount of rate protection that is to be provided.

(6) In any year, if the amounts collected by distributors in accordance with subsection (5) are greater or less than the amounts calculated under subsection (3), the excess or shortfall shall be considered by the Board in calculating the amount of the charge that is to be collected by distributors under subsection (5) for the following year.

(7) Qualified distributors and persons to whom this Regulation applies shall provide the information relating to this Regulation that the Board requires, in a form and within the time specified by the Board.

IESO calculation of proportional share

4. (1) On a monthly basis, the IESO shall collect from market participants the amount calculated by the Board under subsection 3 (4) based on each kilowatt-hour of electricity that is withdrawn from the IESO-controlled grid, as determined in accordance with the Market Rules, where the electricity is for the use of consumers within Ontario.

(2) For the purposes of subsection (1), the IESO shall proportionately charge market participants based on the total of the net volume of electricity withdrawn by the market participants from the IESO-controlled grid during the month and, if the market participant is a licensed distributor, the sum of,

- (a) the total volume of electricity supplied by embedded generators during the month to the market participant, adjusted for losses as required by the Retail Settlement Code; and
- (b) the total volume of electricity supplied by embedded generators during the month to all embedded distributors for whom the market participant is the host distributor, adjusted for losses as required by the Retail Settlement Code.

(3) On a monthly basis, each distributor shall collect from each consumer in its service area and from each embedded distributor to which it distributes electricity an amount proportionate to the volume of electricity distributed to the consumer or to the embedded distributor, including the total volume of electricity supplied by embedded generators to embedded distributors in the host distributor's service areas in the manner described in clause (2) (b).

(4) A distributor who bills a consumer from whom the distributor must collect an amount in accordance with subsection (3) shall aggregate the amount that the consumer is required to contribute to the compensation required under subsection 79.1 (2) of the Act and this Regulation with the amount otherwise payable by the consumer in respect of the wholesale market service rate described in the Electricity Distribution Rate Handbook issued by the Board, as it read on May 11, 2005.

IESO, monthly payments

5. (1) The IESO shall make a monthly payment to each qualified distributor that is equal to the monthly compensation amount determined by the Board under subsection 3 (2), including any payments for an embedded distributor to which the distributor delivers electricity.

(2) On a monthly basis, a host distributor shall, for each embedded distributor to which the host distributor distributes electricity, adjust the accounts between the host distributor and the embedded distributor by crediting the amount calculated by the Board under subsection 3 (2) to the embedded distributor.

(3) Payments required by this Regulation between licensed distributors and the IESO may be made, at the option of the IESO, by way of set off in the accounts maintained by the IESO.

(4) Payments required by this Regulation between an embedded distributor and its host distributor may be made, at the option of the host distributor, by way of set off in the accounts maintained by the host distributor.

IESO to provide certain information

6. (1) For the purpose of calculating the amounts referred to in subsection 3 (5), at least 60 days before the end of each calendar year the IESO shall submit to the Board,

- (a) a forecast of the number of net kilowatt hours of electricity that are expected to be withdrawn from the IESO-controlled grid, as determined in accordance with the market rules, for use by consumers within Ontario during the IESO's next fiscal year;

- (b) a forecast of the total volume of electricity that is expected to be supplied to distributors and embedded distributors by embedded generators;
- (c) documentation supporting the forecasts referred to in clauses (a) and (b);
- (d) a calculation of the total amount of excess or shortfall held in variance accounts maintained by distributors resulting from the difference between the amounts charged to distributors by the IESO and the amounts collected from consumers by distributors;
- (e) documentation supporting the calculation referred to in clause (d); and
- (f) such other information as the Board may require for the purposes of this Regulation, in the form specified by the Board and before the expiry of the period specified by the Board.

(2) The forecast referred to in clause (1) (a) shall be derived from information submitted to the Board by the IESO pursuant to section 19 of the *Electricity Act, 1998* in respect of the IESO's next fiscal year.

(3) At the end of each calendar year, the IESO shall submit to the Board the figures for the total amount of the monthly compensation that was paid out to each qualified distributor for each month of the year.

(4) Each distributor who is a market participant shall give the IESO such information as the IESO may require from the distributor for the purposes of this Regulation and shall do so in the form specified by the IESO before the expiry of the period specified by the IESO. O. Reg. 330/09, s. 6 (4).

(5) Each embedded distributor shall give its host distributor such information as the IESO may require from the host distributor for the purposes of this Regulation and shall do so in a form specified by the host distributor before the expiry of the period specified by the host distributor.

Reliance on information

7. (1) For the purposes of this Regulation, the IESO shall rely on the information provided to it by each distributor who is a market participant.

(2) For the purposes of this Regulation, host distributors shall rely on the information provided to them by their embedded distributors.

8. OMITTED (PROVIDES FOR COMING INTO FORCE OF PROVISIONS OF THIS REGULATION).